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8

9 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11

12 UNITED STATES OF AMERICA,

No. CR 14-0196 CRB

13 Plaintiff,

RESPONSE TO UNITED STATES'  
OPPOSITION TO DEFENDANT'S  
14 MOTION FOR RECONSIDERATION

vs.

15 KWOK CHEUNG CHOW,

Date: August 20, 2014  
Time: 2:00 p.m.  
Hon. Judge Breyer

16 Defendant.

17 \_\_\_\_\_/

18 The Government's Opposition is insufficient because the  
19 Motion did not require leave to file and the Government's  
20 continued assertion that redaction is not feasible is patently  
21 false as evidenced by the thousands of redaction in Discovery.

22

I.

23

24 **NO LEAVE IS REQUIRED FOR A MOTION FOR**  
**RECONSIDERATION IN A CRIMINAL MATTER PURSUANT**  
**TO CRIMINAL LOCAL RULES AND FEDERAL RULES OF**  
25 **CRIMINAL PROCEDURE**

26 Criminal Local Rules are controlling based on the plain  
27 language of the rules. Criminal Local Rule 2-1 states in part  
28 "The provisions of the Civil Local Rules of the Court shall

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1 apply to criminal actions and proceedings, *except where they may*  
 2 *be inconsistent with these criminal local rules*, the Federal  
 3 Rules of Criminal Procedure or provisions of law specifically  
 4 applicable to criminal cases." (emphasis added). Criminal Local  
 5 Rule 12-1 states that motions shall comply with Federal Rule of  
 6 Criminal Procedure 12 and Criminal Local Rule 47-1. Federal  
 7 Rule of Criminal Procedure 12 (b) (1) states : "A party may raise  
 8 by pretrial motion any defense, objection, or request that the  
 9 court can determine without a trial on the merits." Criminal  
 10 Local Rule 47-1 titled "Motion in Criminal Case" in relevant  
 11 part states that a motion in a criminal matter must be in  
 12 writing and calendared with the assigned judge. Criminal Local  
 13 Rule 47-2 discusses various requirements of criminal motions and  
 14 specifically lists various Civil Local Rules which are adopted  
 15 for criminal motions. These Civil Local Rule adoptions address  
 16 issues such as formatting, not leave.

17       Here, Defendant's Motion for Reconsideration is a criminal  
 18 motion addressing a protective order in a criminal case brought  
 19 properly under the local rules applicable here: Criminal Local  
 20 Rules. First, the leave requirement of Civil Local Rule 7-9 is  
 21 inconsistent with the Criminal Local Rules because there are no  
 22 similar requirements in Criminal Local Rules 12-1, 47-1, and  
 23 47-2. Therefore, pursuant to Criminal Local Rule 2-1, Criminal  
 24 Local Rules are controlling because there is an inconsistency.  
 25 Second, Defendant's Motion raised issues surrounding the  
 26 Protective Order in a criminal case which can be adjudicated  
 27 without a trial on the merits, so it fits squarely within  
 28 Federal Rule of Criminal Procedure 12(b) (1). Lastly,

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1 Defendant's Motion fits within all parameters of Criminal Local  
2 Rules 12-1, 47-1, and 47-2.

3 Requiring a criminal defendant to abide by a civil local  
4 rule in a criminal matter is analogous to requiring a Patent  
5 Litigator to abide by Admiralty and Maritime local rules merely  
6 because there is similar language in the title of the motion.  
7 Furthermore, the Protective Order is a matter of extreme  
8 importance and the issue must be addressed as soon as possible  
9 so as not to prejudice all defendants in this case any further.  
10 Therefore, the Government's procedural objection should be  
11 disregarded.

## 12 II.

### 13 **THE GOVERNMENT'S ARGUMENT THAT REDACTION OF** 14 **DOCUMENTS WAS NOT FEASIBLE IS DISINGENUOUS** 15 **BECAUSE THEY MADE THOUSANDS OF REDACTIONS TO** **DISCOVERY ALREADY**

16 The Government's continued assertions regarding the  
17 unfeasibility of redaction is absolutely baffling and highly  
18 concerning. The Government turned over to defense counsel  
19 approximately 1,300 pages of discovery documents relating to  
20 Defendant Kwok Cheung Chow.<sup>1</sup> Based on defense counsel's review  
21 of those specific documents alone, there are *more than 1,000*  
22 *redactions*.<sup>2</sup> In their Opposition, the Government argues that it  
23 would have been unfeasible to redact search warrant and wiretap  
24 applications yet they reflect redactions as well.<sup>3</sup> It becomes

25 \_\_\_\_\_  
26 <sup>1</sup> See Bates Numbers US607954 through US609347.

27 <sup>2</sup> The actual number could be close to or above 2,000, but to  
conserve time a low estimate has been used.

28 <sup>3</sup> See Bates Numbers US400357, US400525, US400539, US400674,  
US400688, US401187, and US401202.

1 very hard to reconcile how the Government can argue in good  
 2 faith infeasibility of redaction, yet they have managed to make  
 3 over 1,000 redactions in approximately 1,300 documents.<sup>4</sup> Not  
 4 only is redaction theoretically possible, but it already  
 5 occurred. Therefore, this Protective Order should be  
 6 reconsidered for the reasons stated in the Motion.

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### CONCLUSION

9 United States v. Chow is a case with incredible  
 10 implications to the citizens of this nation, but what may not be  
 11 obvious to the Government is that defense counsel are  
 12 accountable to their clients, all of whom are presumed innocent.  
 13 Many clients in this case are facing potential life sentences  
 14 and what may seem an insignificant issue to some of those  
 15 prosecuting this case is of incredible importance to our clients  
 16 and to their families, who stand by their phones every minute of  
 17 every day, waiting for case updates on their loved ones.

18 When the Government repeatedly makes significant errors, or  
 19 improperly presents issues such as discovery, or states  
 20 redaction is not feasible when it has already occurred, the  
 21 nightly phone call to our clients' loved ones becomes a  
 22 difficult burden to bear. All a mother can hope for when her  
 23 son or daughter is facing a life sentence is fairness,  
 24 accountability, and integrity at the hands of the United States  
 25 prosecutor. Judicial intervention is necessary in this matter

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<sup>4</sup> The 1,300 document figure does not include warrant and wiretap affidavits. Also, the estimate is based only on the documents reviewed so far. The more accurate number of redactions could be even higher.

1 and the Motion for Reconsideration should be granted.

2 DATED: August 8, 2014

Respectfully Submitted,

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/s/CURTIS L. BRIGGS

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KWOK CHEUNG CHOW

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**DECLARATION OF COUNSEL**

I, CURTIS L. BRIGGS, declare:

I am an attorney licensed to practice in the state of California and the Northern District of California, and the attorney of record for Defendant herein, KWOK CHEUNG CHOW. The statements in the accompanying Response to United States' Opposition to Defendant's Motion for Reconsideration are true and correct to the best of my knowledge, based on my information and belief.

I declare under penalty of perjury that the foregoing true and correct. Executed August 8, 2014, at San Francisco, California.

/s/ CURTIS L. BRIGGS  
CURTIS L. BRIGGS

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